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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5507 OF 1997

The Kini Karyat Shikshan Mandal & Anr. ... Petitioners

V/s.

Pramod Satuppa Oulkar & Ors. ... Respondents

Mr.N.V. Bandiwadekar for Petitioners
Mr.Mihir Desai for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 16, 2007**

ORAL JUDGMENT:

. The Petitioners challenge the order of the School Tribunal dated 9.10.1997. By this order, the School Tribunal has declared that the oral termination of service of Respondent No.1, effected from 29.6.1996 was illegal, ineffective and void ab initio. The petitioners were directed to reinstate Respondent No.1 with continuity of service and backwages.

2. The Petitioner No.1 is an educational institution and governs the functioning of the petitioner No.2 school. An advertisement was issued by the petitioners on 16.7.1992 inviting applications for the post of Assistant Teacher. The post was reserved for a candidate belonging to the Scheduled Tribe category. The advertisement also stipulated that in the event a candidate from this category was not available, a non-backward class candidate would be appointed for a

temporary period of a year. Respondent No.1 applied for the post pursuant to the advertisement. According to the Petitioner, no other application was received and hence, they appointed Respondent No.1 to the post on a temporary basis for one year. This appointment order was issued on 18.7.1992. Thereafter, the services of Respondent No.1 came to an end when his tenure was determined on 30.4.1993. The post was again advertised and again no suitable candidates from the ST category were found and Respondent No.1 was appointed on the post temporarily. Approval was granted for the appointment of Respondent No.1 to the post for the academic year 1992-93 since there was no suitable candidate from the ST category. In July 1993, the petitioners advertised the posts of assistant teachers on a clock hour basis. Several candidates including Respondent No.1 were selected. Respondent No.1 was appointed to teach physical education on a clock-hour basis on 12.7.1993. Approval was also accorded by the Deputy Director of Education for the appointment of Respondent No.1 on a clock-hour basis. The tenure of Respondent No.1 came to an end with the academic year 1993-94. Again, the petitioners advertised the post on 6.8.1994 and as before Respondent No.1 was appointed to the post meant for the reserved category. This appointment was also for a temporary period upto 30.4.1995. The necessary approvals were granted by the Education Officer. At the

end of the academic year 1994-95, the petitioners advertised once more for one post of Assistant Teacher for the ST category. As before no suitable candidate was available and, therefore, the petitioners decided to appoint Respondent no.1 on 12.6.1995 against the reserved post. For the academic year 1996-97, the petitioner advertised again. Respondent No.1 and several other candidates applied for the post which was reserved for the ST category. Consequent upon the interviews being held a candidate belonging to the Nomadic Tribe was appointed by the Petitioner as he was found suitable. His appointment was on probation for a period of two years. Thus, Respondent No.1 was not appointed to the post as a reserved category candidate who was suitable for the post was available. Aggrieved by the decision of the petitioners not to select him to the post, Respondent No.1 filed an appeal under the MEPS Act being Appeal No.166 of 1996 on 25.7.1996. He claimed that his services had been terminated orally by the petitioners on 29.6.1996.

3. The petitioners in their written statement pleaded that the appointment of Respondent No.1 was against a reserved category post; it was for a temporary period and once the tenure came to an end, Respondent No.1 had no right to continue in that post. It was also pleaded that the appeal was barred by

limitation. An application for condonation of delay was filed by Respondent No.1 contending that it was being filed as a precautionary measure although there was no delay in preferring an appeal.

4. The Tribunal allowed the appeal and directed the petitioners to reinstate Respondent No.1 as an assistant teacher with consequential benefits including backwages.

5. The learned Counsel appearing for the petitioners submits that the decision of the School Tribunal is incorrect since the appointment of Respondent No.1 was for a temporary period as he had been appointed against a reserved post. The learned Advocate, therefore, submits that Respondent No.1 could not claim the benefits of permanency as he was appointed for a temporary period, the post being reserved for a ST candidate. The learned Advocate points out that the reasoning of the Tribunal that the Respondent No.1 was deemed to be permanent u/s 5(2) of the MEPS Act is incorrect. He submits that all necessary documents were produced on record before the Tribunal which indicated that the appointment of Respondent No.1 was to a post for reserved category and, therefore, the Tribunal could not have concluded that his appointment was permanent when admittedly, Respondent No.1 belongs to the general category. The learned Counsel points out that the

advertisement, approval order of the education department and several other documents were produced which established that the post was reserved. It is only the appointment letter which did not bear any stipulation that Respondent No.1 was being appointed against the post which was reserved for the ST category. However, the appointment admittedly was for a temporary period.

6. The learned Counsel then submits that the Tribunal has not considered the question of delay while deciding the appeal. Admittedly, the services of Respondent No.1 had been terminated at the end of the academic year 1995-96. Therefore, there was no question of continuing him in June 1996. The date of termination from service mentioned by the petitioner being June 1996 was only to overcome the period of limitation, according to the learned advocate. He then relies on the judgments of the Division Bench of this Court in the case of *Mrs.Sumita Ramesh Joshi v/s. Secretary, Khalapur Taluka Shikshan Prasarak Mandal & Ors.,* **[1996] (1) BCJ 503** and in the case of *Shri Malikarjun Shikshan Prasarak Mandal, Solapur v/s. R.V. Rajmane & ors.,* **1993 CTJ 67** and of the learned Single Judge in *Vilasrao Sarjerao Patil v/s. Asarondi Panchkroshi Shikshan Prasarak Mandal & Ors.,* **2004 (4) Mh.L.J. 762.**

7. The learned Counsel appearing for Respondent No.1 points out the observations of the Tribunal that the Petitioners had not placed on record any document to show that Respondent No.1 was appointed to a reserved category post. He submits that unless the petitioners are able to demonstrate that the appointment of Respondent No.1 was against the post which was reserved for the backward classes, his services could not be terminated. He had continued in service for over two years by virtue of which he was entitled to permanent employment with the petitioners. It is also submitted that Respondent No.1 was qualified with M.A. and B.P.ED. degrees in physical education. The learned advocate submits that the appointment order did not stipulate that Respondent No.1 had been appointed to a reserved post. According to the learned Advocate, a school which has 250 students must appoint a teacher for physical education having the qualification of B.P.ED. The learned Counsel submits that no other candidate with the B.P.ED. qualification was available and, therefore, the petitioners ought to have accepted Respondent No.1 as a permanent employee. Three schools were being run by the petitioner institution out of which two schools had appointed teachers with the qualification of B.P.ED. There were 850 pupils in the present school and,therefore, in accordance with the circular of the Government of Maharashtra issued on 14.5.1987, he was

entitled to be appointed as a permanent teacher for physical education. Reliance is also placed on the judgment of the Division Bench of this Court in the case of *Anjarla Shikshan Sanstha vs. Kumudini Devji Kulkarni & Ors.,* **Writ Petition No.4623 of 1985** decided on 30.3.1988. The Division Bench has held that the appointment order issued to the teacher in the case before it did not disclose that the appointment was against a reserved category post. The Division Bench has also observed that the relevant records had not been produced by the institution before it to establish that according to the roster the post was reserved for a backward class candidate. It therefore upheld the contention of the teacher.

8. The appointment order which is annexed at Exhibit A to the petition indicates that the appointment of Respondent No.1 was made against a post reserved for the ST category. The advertisement issued, which is annexed at Exhibit L, makes it clear that the post is reserved until such time as a suitable reserved candidate is found. Admittedly, the post was advertised consecutively for five years. No such candidate was found by the petitioners. In the 5th year, after the advertising the post, the petitioners found a suitable candidate belonging to the Nomadic Tribe and he was appointed to the post. In the present case, both the

advertisements, the approval accorded indicate that the post was reserved post. Therefore, the finding of the Tribunal that there were no documents on record to show that the post was available in the open category is incorrect. The conclusion drawn by the Tribunal that the petitioners had not proved adequately that the post was a reserved post will have to be set aside. Once these findings of the Tribunal are not accepted, the case of Respondent No.1 that he is entitled to relief, is unsustainable.

9. In the case of *Sumita Ramesh Joshi (supra)*, the Division Bench has held that when a person from the general category is appointed against a reserved vacancy in accordance with Rule 9(9)(a) of the MEPS (Conditions of Service) Rules, he cannot expect to be appointed on a permanent basis against this post. The appointment is purely temporary and a candidate from the open category cannot claim to have been confirmed in that post. In the present case also, Respondent No.1 had been appointed as aforesaid against a reserved vacancy. He, therefore, cannot claim permanency in the post. Similarly, in the case of *Vilasrao Sarjerao Patil (supra)*, a learned Single Judge of this Court has held that unless the post is dereserved, a candidate from the open category would have the status of a temporary employee. He cannot claim permanency on the reserved

post as a matter of right. In the judgment of *Shri Malikarjun Shikshan Prasarak Mandal (supra),* the Division Bench of this Court has opined that if the initial appointment was against a reserved category post, then the teacher cannot claim to be a probationer merely because he was appointed for two consecutive years. These judgments squarely apply to the facts involved in the present case. Respondent No.1 was appointed for a temporary period against a reserved vacancy. He, therefore, cannot claim to be a probationer who has completed two years of service, thus, acquiring the status of a deemed permanent employee. In my view, therefore, the Tribunal has erred in holding that the petitioners had illegally terminated the services of Respondent No.1. The services of Respondent No.1 ceased once the academic year 1995-96 came to an end.

10. As regards limitation, it is true that the school tribunal ought to have decided the issue before dealing with the merits of the matter. There is a dispute as to whether the services of Respondent No.1 ceased at the end of the academic year 1995-96 i.e., on 30.4.1996 or on 29.6.1996 as claimed by Respondent No.1. The Tribunal ought to have first considered when the cause of action arose and decided the issue of limitation. However, in the present case, after the

passage of over almost 10 years, there is no question of remanding the matter to the Tribunal to decide the issue of limitation. There is no doubt that as to the delay in filing the appeal. However, the delay is of only two months, which can be condoned.

11. In the circumstances, petition allowed. Rule made absolute. No costs.